

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers
FROM/PHONE: Patrick Lynn, Police Chief/954-693-8320
PREPARED BY: Daniel J. Stallone, Esq., Code Compliance Official
SUBJECT: Ordinance
AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF THE TOWN OF DAVIE BY AMENDING CHAPTER 17 ENTITLED "PEDDLERS AND SOLICITORS" PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. (tabled from October 7, 2009 & November 4, 2009)

REPORT IN BRIEF: It is the purpose of this ordinance to regulate peddlers and solicitors in the Town of Davie in order to promote the health, safety, and general welfare of the citizens of the Town. It is also intended to establish reasonable and uniform regulations to preclude applicants who because of criminal offense convictions related to moral or business turpitude from receiving peddler or solicitor permits for carrying out such activities within the Town. At the October 7, 2009 Council meeting, this item was tabled to November 4, 2009.

PREVIOUS ACTIONS: At the October 7, 2009 Council meeting, this item was tabled to November 4, 2009.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s): Ordinance

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF THE TOWN OF DAVIE BY AMENDING CHAPTER 17 ENTITLED "PEDDLERS AND SOLICITORS" PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Police Department's Code Compliance Division desires to amend Chapter 17 which is entitled "Peddlers and Solicitors"; and

WHEREAS, it is in the interest of the residents and citizens of the Town of Davie to insure that all peddlers and solicitors permitted to operate in the town shall have appropriate qualifications; and

WHEREAS, the Town Council of the Town of Davie is satisfied that their concern for the public health, safety and welfare has been addressed through the amendment and revision of this code; and

WHEREAS, the enactment of the code revisions through this ordinance will insure the application of a fair and equitable procedure that will enable the town to issue permits to peddlers and solicitors who may qualify under its guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE,

FLORIDA.

SECTION 1. Purpose. It is the purpose of this ordinance to regulate peddlers and solicitors in the Town of Davie in order to promote the health, safety, and general welfare of the citizens of the Town. It is also intended to establish reasonable and uniform regulations to preclude applicants who because of criminal offense convictions related to moral or business turpitude from receiving peddler or solicitor permits for carrying out such activities within the Town. The provisions of this ordinance have additional procedures that allow the appeal of any decision affecting the denial of a permit for such activity. It is not the purpose nor effect of imposing a limitation or restriction on the issuance of peddler or solicitor permits or licenses. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by charitable organizations, businesses or

individuals to engage in peddler or solicitor activity.

SECTION 2. Definitions.

Charitable organization shall mean a group which is or holds itself out to be benevolent; educational; voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization; or any person who solicits or obtains contributions solicited from the public for charitable purposes. "Charitable organization" shall not be deemed to include a duly constituted religious organization or any group affiliated with and forming an integral part of that organization.

Peddler or *solicitor* shall include any person, whether a resident of the town or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter. The word "peddler" shall include the words "hawkers," "hucksters," "itinerant merchant," "itinerant vendors" and "solicitors for donations."

Seasonal sales as used herein shall mean Easter, Mother's Day, Fourth of July, Halloween, Thanksgiving and Christmas.

Stationary location as used herein shall include the stopping at any location, for the purpose of conducting business, for a period longer than ten (10) minutes in any twenty-four-hour period.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2009

PASSED ON SECOND READING THIS _____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2009

Chapter 17 PEDDLERS AND SOLICITORS*

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Sec. 17-1. Definitions.

The following terms when used in this chapter shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Charitable organization shall mean a group which is or holds itself out to be benevolent; educational; voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization; or any person who solicits or obtains contributions solicited from the public for charitable purposes. "Charitable organization" shall not be deemed to include a duly constituted religious organization or any group affiliated with and forming an integral part of that organization.

Peddler or *solicitor* shall include any person, whether a resident of the town or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter. The word "peddler" shall include the words "hawkers," "hucksters," "itinerant merchant," "itinerant vendors" and "solicitors for donations."

Seasonal sales as used herein shall mean Easter, Mother's Day, Fourth of July, Halloween, Thanksgiving and Christmas.

Stationary location as used herein shall include the stopping at any location, for the purpose of conducting business, for a period longer than ten (10) minutes in any twenty-four-hour period. (Code 1964, § 10B-I; Ord. No. 84-30, § 1(10-B.1), 9-19-84; Ord. No. 92-18, § 1, 5-6-92; Ord. No. 97-55, § 1, 9-17-97)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 17-1.1. Charitable solicitation requirements.

It shall be unlawful for any person, firm, or corporation to solicit for charitable organizations, as hereinabove defined, unless the charitable organization is located within the corporate limits of the town, or unless the organization is registered and has a permit from the department of state under the provisions of F.S. Chapter 496.

Ord. No. 97-55, § 2, 9-17-97)

Sec. 17-1.2. License and permit required.

It shall be unlawful for any solicitor or peddler, as defined in this chapter, to engage in that business within the corporate limits of the town without first obtaining a permit and license therefor in compliance with the provisions of this chapter and other applicable ordinances. Each person, firm, corporation, business or charitable organization shall apply for the permit and license and each solicitor and peddler associated therewith shall apply individually as noted herein.

Ord. No. 97-55, § 2, 9-17-97)

Sec. 17-1.3. Permissible hours for solicitation.

It shall be unlawful to canvass or solicit for commercial or charitable organizations between the hours of ~~9~~ 8:00 p.m. and 9:00 a.m. of the following forenoon within the corporate limits of the town.

Ord. No. 97-55, § 2, 9-17-97)

Sec. 17-2. Application for permit; contents.

(a) Applicants for permits required under this chapter must file with the town's local business tax receipt clerk an application for the business or charitable organization and a separate application for each individual peddler or solicitor in writing ~~in duplicate~~ on a form to be furnished by the ~~town~~ local business tax receipt clerk which shall give to the town the following information:

- (1) Legal Name and physical description of the applicant;
- (2) Current Address of the person, firm, corporation, business or charitable organization applicant, and the record of the applicant's prior addresses for the last five (5) years;
- (3) A brief description of the nature of the business and the goods to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) If a vehicle is to be used, a description of the same, together with license number or other means of identification;
- (7) A photograph of the applicant taken within sixty (60) days immediately prior to the date of filing of the application which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant;
- (8) ~~The fingerprints of the applicant and the applicant may provide~~ the names of at least two (2) reliable property owners ~~of in~~ in Broward County, Florida, who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant; ~~as will enable an investigator to properly evaluate such character and business responsibility;~~
- (9) A signed and notarized affidavit statement as to stating whether or not the applicant has been convicted of any crime, or violation of any municipal or county ordinance, the location of the violation, the nature of the offense or violation, the identification of the statute(s) or ordinance violated and the punishment or penalty assessed therefore; the applicant shall state whether it has filed a cause of action in any bankruptcy proceeding;
- (10) A background check shall be obtained from the Florida Department of Law Enforcement (FDLE) by the applicant and the original shall be provided with each completed application to the local business tax receipt clerk;
- (11) ~~(b)~~ The applicant shall file with the application, for all food handling business, a State of Florida Department of Business and Professional Regulation Division of Hotels and Restaurants or Broward County Health Department Certificate of Inspection.

(Code 1964, § 10B-2(a)--(j); Ord. No. 84-30, § 1(10-B.2), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Cross references: Licenses and business regulations, Ch. 13.

Sec. 17-3. Permit fee; insurance.

At the time of filing the application, a fee as defined by the business tax rate schedule shall be paid to the ~~town~~ local business tax receipt clerk to cover the cost of processing said peddler or solicitor permit application(s), ~~investigation as well as~~ proof of state sales tax number, one thousand dollars (\$1,000.00) surety bond conditioned upon compliance with all the provisions of this chapter, proof of insurance in an amount no less than one million dollars (\$1,000,000.00) as follows:

- (1) A public liability and property damage insurance policy or commitment with a company authorized to transact business in the state to secure payment of any loss or damage resulting from any accident arising out of or caused by the operation of said peddler or solicitor.
- (2) Each vehicle shall be insured in the following amounts: public liability policy in the amount of one million dollars (\$1,000,000.00) for injuries to or death of any person; one million dollars

(\$1,000,000.00) for any injuries to or death of more than one (1) person in any one accident; property damage policy in the amount of at least one million dollars (\$1,000,000.00) per accident. (3) Evidence of such policy or policies shall be deposited with the ~~town~~ local business tax receipt clerk, and shall be kept in full force and effect by the applicant at all times. Failure to file such evidence or policy or policies with the ~~town~~ local business tax receipt clerk or to keep the same in full force and effect will automatically cancel and void the permit. (Code 1964, § 10B-2; Ord. No. 84-30, § 1(10-B.2), 9-19-84; Ord. No. 92-18, § 1, 5-6-92; Ord. No. 98-48, § 1, 12-16-98; Ord. No. 2007-007, § 2, 5-16-07)

Sec. 17-4. ~~Investigation of applicant; Result of investigation criminal history background check provided by applicant to determine whether permit will be issued.~~

(a) Upon receipt of ~~such a~~ notarized affidavit from applicant and the completed Florida Department of Law Enforcement (FDLE) criminal background check, application, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral turpitude to be made as he deems necessary for the protection of the public. the ~~town~~ local business tax receipt clerk shall determine whether the peddler or solicitor permit will be issued based upon a the findings of the criminal background check.

~~(b) 1. If as a result of the FDLE criminal background check provided by the applicant, the applicant's character or business responsibility is found to be unsatisfactory due to a criminal history that includes any of these offenses of business or moral turpitude: arson, blackmail, burglary, embezzlement, false pretenses, forgery, fraud, larceny, robbery, abandonment, adultery, assault, battery, bigamy, and prostitution, the applicant shall be disapproved and the chief of police shall endorse on such application his disapproval and his reasons for the same, and return to the town local business tax receipt clerk, who shall notify the applicant that his application is disapproved and that no permit will be issued.~~

~~(c) 2. If as a result of the FDLE criminal background check provided by the applicant, such investigation, the character and business responsibility of the applicant are found to be satisfactory due to there being no criminal history that includes any of the following offenses of business or moral turpitude: arson, blackmail, burglary, embezzlement, false pretenses, forgery, fraud, larceny, robbery, abandonment, adultery, assault, battery, bigamy, and prostitution, the chief of police shall endorse on the application his approval, and return the application to the town local business tax receipt clerk, who shall, upon payment of the prescribed fee, deliver to the applicant his permit.~~

(Code 1964, § 10B-3; Ord. No. 84-30, § 1(10-B. 3), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-5. Permit.

Such permit shall be conspicuously displayed by permittee and shall contain the signature and seal of the issuing ~~officer~~ local business tax receipt clerk and shall show the name, address and photograph of the permittee, the class of permit, the date of issuance and the length of time the same shall be operative, as well as the permit number and other identifying description of any vehicle used in such peddling. The ~~town~~ local business tax receipt clerk shall keep a permanent record of all permits issued to peddlers and solicitors for the appropriate public records retention time.

(Code 1964, § 10B-3; Ord. No. 84-30, § 1(10-B. 3), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-6. Duration of permit; due dates.

All permits issued under this chapter shall be issued for a period not in excess of one (1) year and shall expire on September 30th of each year. All permit fees hereunder shall be payable on or before October 1st of each year. Permit applications received after April 1st of any year shall be listed as half-year permits, and shall be assessed for a half-year fee. ~~Half-year permits shall expire on September 30th of each year and shall be renewed on or before October 1st of each year at the~~

~~full-year fee. In no case shall any peddler or solicitor permits or licenses issued under this section be automatically renewed.~~

(Ord. No. 84-56, § 1(10-B.2), 11-21-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-7. Revocation of permit.

(a) Permits issued under the provision of this chapter may be revoked by the ~~mayor~~ town after notice and hearing before the special magistrate for code enforcement, for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for license or accompanying documents submitted thereto;

(2) Fraud, misrepresentation or false statement made in the course of carrying on ~~his~~ the business as a peddler or solicitor;

(3) Any violation of this chapter;

(4) Conviction of any of the following crimes involving business or moral turpitude; arson, blackmail, burglary, embezzlement, false pretenses, forgery, fraud, larceny, robbery, abandonment, adultery, assault, battery, bigamy, and prostitution;

(5) Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace or to create a nuisance to the health, safety, or general welfare of the public.

(b) Notice of the special magistrate hearing for revocation of a permit shall be given in writing, setting forth specifically the ~~grounds of complaint~~ code violation(s) and the time and place of hearing. Such notice shall be provided to the permittee in accordance with the code enforcement provisions followed under town code chapter 6 and chapter 162 F.S. mailed, postage prepaid, and may be sent to the permittee at his last known address at least ~~five (5)~~ ten (10) days prior to the date for the special magistrate hearing. (Code 1964, § 10B-7; Ord. No. 84-30, § 1(10-B. 7), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-8. Seasonal sales.

(a) Seasonal sales may be permitted for a period of two (2) weeks prior to Easter, Mother's Day, Fourth of July, Halloween and Thanksgiving. Seasonal sales may be permitted for a period of four (4) weeks prior to Christmas. Seasonal merchandise shall be limited to flowers, legal fireworks, pumpkins, Christmas trees and wreaths.

(b) The fee for seasonal sales shall be two hundred fifty dollars (\$250.00) a day, except that fee exempt licenses may be issued to the following:

(1) An exempt license without fee will be issued to customary religious, charitable or educational activities of nonprofit charitable and nonprofit educational institutions, or of duly constituted and recognized religious nonprofit corporations, having their churches located within the town;

(2) All nonprofit civic clubs maintaining a meeting place within the town;

(3) College and high school students may, with the approval of the athletic association or authority of their school, sell pens, badges, insignia and novelties of their school.

(c) A fifty dollar (\$50.00) bond to assure cleanup of sales area must be posted prior to issuance of business tax.

(d) Seasonal sales may be allowed upon approval of council.

(e) Seasonal sales with the exception of Christmas tree sales, shall be conducted completely on private property, zoned for commercial use, and shall be sponsored by an existing business. The existing business shall provide written permission for use of existing parking and toilet facilities.

(f) Christmas tree sales shall be conducted completely on private property, which may be vacant lot, zoned for commercial use, not sponsored by an existing business, and shall provide portable toilet facilities. A nonprofit organization may conduct Christmas tree sales on land owned by a nonprofit organization, and shall provide toilet facilities.

(Ord. No. 84-30, § 1(10-B. 8), 9-19-84; Ord. No. 92-18, § 1, 5-6-92; Ord. No. 2007-007, § 2, 5-16-07)

Sec. 17-9. Appeals.

- (a) Any person aggrieved by the action of the ~~chief of police or the town~~ local business tax receipt clerk in the denial of an application for permit, as provided in section 17-4 et seq., ~~or in the decision with reference to the revocation of a permit, as provided in section 17-7,~~ shall have the right of appeal to the council who shall be acting within its quasi-judicial capacity.
- (b) Such appeal shall be taken by filing with the council within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal.
- (c) The council shall set a time and place for the hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in section 17-7 for notice of hearing on revocation. The decision and order of the council on such appeal shall be final and conclusive as to the town's disposition of the matter.

(d) The appellant shall have the right to appeal the council's decision in the circuit court.

(Code 1964, § 10B-8; Ord. No. 84-30, § 1(10-B.9), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Editor's note: Ordinance No. 92-18, § 1, adopted May 6, 1992, deleted § 17-9 in its entirety and renumbered §§ 17-10 and 17-11 as §§ 17-9 and 17-10. Former § 17-9 pertained to exempt areas and derived from Ord. No. 84-30, § 1(10-B.10), adopted Sept. 19, 1984; and Ord. No. 84-56, § 2, adopted Nov. 21, 1984.

Sec. 17-10. Use of streets.

- (a) No peddler shall operate within one thousand (1,000) feet of the property line of a school, public-operated park or recreational facility within the town. No peddler shall operate within one hundred (100) feet of a street or roadway intersection, nor within five (5) feet of a public sidewalk.
- (b) No peddler or solicitor shall have any exclusive right to any location in the public streets, alleys, or other public places, nor shall any be permitted a stationary location, nor shall ~~he~~ any person be permitted to operate in such a way as would restrict or interfere with the ingress or egress of an abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or create an obstruction to adequate access for fire, police or sanitation vehicles.
- (c) No person shall obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon.
- (d) The judgment of a police officer or code enforcement officer exercised in good faith shall be deemed conclusive as to whether the peddling or soliciting activity constitutes a traffic or pedestrian impediment or hazard or access obstruction. A peddler or solicitor shall move his location at least two hundred (200) feet from the last location occupied before stopping to conduct business and shall not return to the same location until twenty-four (24) hours has elapsed notwithstanding the ability of a police officer or code enforcement officer to exercise their judgment in good faith as to the location of such activity.

(Code 1964, § 10B-4; Ord. No. 84-30, § 1(10-B.4), 9-19-84; Ord. No. 92-18, § 1, 5-6-92; Ord. No. 97-55, § 3, 9-17-97)

Editor's note: See editor's note to § 17-9.

Sec. 17-11. Activities limited to certain areas.

Peddler sales activities within commercially and industrially zoned districts shall only be permitted within those zoning districts that permit sales outside of a completely enclosed

building. This section is not to prohibit or prevent seasonal sales activities in accordance with section 17-8, or peddlers from operating on construction sites while construction is in progress, or when operating within the confines of a properly permitted and licensed carnival or festival. (Ord. No. 92-18, § 1, 5-6-92)

Editor's note: See editor's note to § 17-9.

Sec. 17-12. Exhibition of permit.

Peddlers and solicitors are required to exhibit their permit.

(Code 1964, § 10B-5; Ord. No. 84-30, § 1(10-B.5), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-13. Duty to enforce.

It shall be the duty of any police officer or code enforcement officer of the town to require any person seen peddling or soliciting to produce ~~his~~ a peddler's or solicitor's permit and to enforce the provisions of this chapter against any person found to be violating the same.

(Code 1964, § 10B-6; Ord. No. 84-30, § 1(10-B.6), 9-19-84; Ord. No. 92-18, § 1, 5-6-92)

Sec. 17-14. Severability.

This chapter and its sections hereunder, are hereby declared to be independent divisions, and not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any section of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections and the application of such sections to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections would have been passed independently of such section or provision so known or found to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.